



D-1243

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
Enright, et al.)	
)	
Application No.: 10/796,506)	Art Unit 2621
)	
Confirmation No.: 1933)	
)	
Filing Date: March 9, 2004)	Patent Examiner
)	Anand Shashikant Rao
)	
Title: Cash Dispensing Automated)	
Banking Machine With Improved)	
Fraud Detection Capabilities)	

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Appellants request review of the rejections in the above-identified application, as presented in the final Office Action ("Action") dated July 19, 2007.

No amendments are being filed with this Request.

This Request is being filed with a Notice of Appeal.

The review is requested for the reason that the rejections are not legally valid because the applied art does not anticipate the claimed subject matter.

Claim Status

Claims 1-27 are pending, with claim 1 being independent.

Claims 1-27 were rejected under 35 U.S.C. § 102(e) as being anticipated by Magee (US 6,766,943).

Arguments

Magee does not teach the recited features and relationships. Claim 1 at step (a) recites "capturing with an imaging device, first image data . . . of a user interface". Claim 1 at step (b) recites "subsequent to (a), capturing with *the* image device, second image data . . . of *the* user interface" (step b). Claim 1 at step (c) recites "comparing the first image data and the second image data through . . . processor to determine if there is . . . a level of change". Claim 1 at step (d) recites "responsive to determining . . . the level of change . . . taking . . . programmed action".

The sections of Magee that are relied upon by the Office are not pertinent to the recited subject matter. At best, Magee has a camera (34) for biometric input (col. 7, lines 18-19).

The Office has not shown that Magee teaches capturing an image of a user interface. Where has the Office established in the record that Magee teaches that the camera (34) captures an image of the user interface (24), as alleged by the Office? Particularly note the position and angle of the camera (34) relative to the user interface (24). One skilled in the art would reach a conclusion that differs from the Office's allegation.

The Office ignores that step (b) refers back to *the* image device and *the* user interface of step (a). The Office further ignores that step (c) recites comparing image data. Where does Magee discuss capturing and comparing images of a user interface? Where does Magee discuss any image?

Nor has the Office explained how the relied upon biometric process in Magee could be carried out by using an image that contains a user interface. Where does Magee teach biometric input that includes use of a user interface image, as apparently alleged by the Office?

The Office has failed to show that Magee anticipates the claims. Thus, Applicants respectfully submit that the rejections should be withdrawn.

Furthermore, based on the front page of the Magee patent and the pending record, the present application assignee and the Magee patent assignee are indicated to be the same.

Additionally, as evidenced by the front page of the Magee patent, the present attorney and the Magee patent attorney are the same. It is respectfully submitted that the Examiner misapplies the Magee teaching.

Appellants respectfully submit that claim 1 is allowable along with all claims that depend therefrom. Magee does not anticipate the claims. The rejections are legally improper and therefore should be withdrawn.

Response to statements in the final Office Action

The final Office Action dated July 19, 2007 states (at page 4, last four lines and line 1 of page 5) that Magee "specifies that the camera may be used for biometric input, and not that it is solely used for just a purpose. Additionally, since Magee discloses that the camera as an input device is can be used for other purposes (Magee: column 7, lines 35-40), the Examiner notes that this leads doesn't restrict it to just biometric implementation".

Magee at the relied upon col. 7, lines 35-40 section merely indicates that "these input and output devices of the user interface 24 are exemplary and in other embodiments, other or different input and output devices may be used". That is, one skilled in the art would recognize that Magee may have other embodiments with other arrangements of input and output devices.

Where does Magee teach that the referenced input and output devices "can be used for other purposes" as alleged by the Office? More specifically, where does Magee teach that the camera (34) is used for a purpose other than biometric input? The rejection at best smacks of attempted "obviousness." However, all rejections are based on anticipation.

The final Office Action at page 5, lines 1-7 apparently attempts to provide reasoning for the anticipation rejections. The Office states that "Magee discloses radiation sensing devices at the card reader slot (Magee: column 13, lines 65-67), and that the comparison test is 'pixel based' (Magee: column 14, lines 1-15). Given the fact cameras are inherently visible radiation 'sensing devices', the Examiner asserts that the radiation sensors at least for visible radiation are cameras for generating the first and second images. Accordingly, the Examiner maintains the Magee reads upon the instant invention as claimed".

Applicants respectfully submit that Magee at the relied upon sections does not support the features relied upon in the rejections. For example, where does Magee at col. 14, lines 1-15 discuss "pixel based" comparison. Where does the entire Magee patent even mention "pixel"?

The Office's stated reasoning for the rejections as being somehow based on relating biometric input cameras to card reader slot radiation sensing devices is incomprehensible. The reasoning appears to be based on a different reference. Yet, as best understood, the rejections are based solely on U.S. Patent 6,766,943 to Magee, which is the only Magee reference of record.

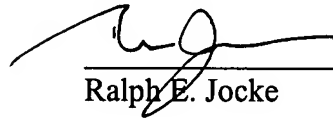
Appellants reserve all rights to present additional arguments

Because of the limited number of total pages allowed herein, the Appellants have not necessarily presented all arguments in favor of patentability, especially with regard to the dependent claims and entitlement to a priority date earlier than the applied reference. Appellants reserve the right to later present additional arguments in an Appeal Brief.

Conclusion

Appellants respectfully submit that all pending claims are allowable.

Respectfully submitted,



Ralph E. Jocke

Reg. No. 31,029

WALKER & JOCKE
231 South Broadway
Medina, Ohio 44256
(330) 721-0000
Customer No. 28995